

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1498

Introduced by Assembly Member De Leon

February 27, 2009

~~An act to amend Section 13826.1 of the Penal Code, relating to crime prevention.~~ *An act to amend Section 12021 of the Penal Code, relating to firearms.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1498, as amended, De Leon. ~~Crime prevention: gang violence. Firearms: possession.~~

Existing law provides that a person convicted of specified misdemeanor crimes who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a public offense, which shall be punished as specified.

This bill would additionally include within this provision specified misdemeanor crimes relating to burglary, weapons, and criminal street gang activity. Because this bill would change the punishment of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law establishes the Gang Violence Suppression Program to provide financial and technical assistance for district attorneys' offices;~~

~~school districts, and other local agencies and organizations. Existing law provides guidelines, procedures, and reporting requirements for the program. Existing law establishes criteria for funding this program and requires that gang violence prosecution units receiving funds under this program concentrate enhanced prosecution efforts and resources upon specified gang-related cases.~~

~~This bill would authorize school districts to enter into memoranda of understanding with local city attorney and district attorney offices to ensure the safety of their students pursuant to the program.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 12021 of the Penal Code is amended to*
2 *read:*

3 12021. (a) (1) Any person who has been convicted of a felony
4 under the laws of the United States, the State of California, or any
5 other state, government, or country or of an offense enumerated
6 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted
7 to the use of any narcotic drug, and who owns, purchases, receives,
8 or has in his or her possession or under his or her custody or control
9 any firearm is guilty of a felony.

10 (2) Any person who has two or more convictions for violating
11 paragraph (2) of subdivision (a) of Section 417 and who owns,
12 purchases, receives, or has in his or her possession or under his or
13 her custody or control any firearm is guilty of a felony.

14 (b) Notwithstanding subdivision (a), any person who has been
15 convicted of a felony or of an offense enumerated in Section
16 12001.6, when that conviction results from certification by the
17 juvenile court for prosecution as an adult in an adult court under
18 Section 707 of the Welfare and Institutions Code, and who owns
19 or has in his or her possession or under his or her custody or control
20 any firearm is guilty of a felony.

21 (c) (1) Except as provided in subdivision (a) or paragraph (2)
22 of this subdivision, any person who has been convicted of a
23 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
24 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,
25 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5,
26 273.6, 417, 417.6, 422, 459, 626.9, 646.9, 12023, or 12024,

1 *subdivision (a) of Section 12025, subdivision (b) or (d) of Section*
2 *12034, Section 12040, subdivision (b) of Section 12072,*
3 *subdivision (a) of former Section 12100, Section 12220,*
4 *subdivision (b) of Section 12280, Section 12320, or Section 12590*
5 *of this code, or Section 8100, 8101, or 8103 of the Welfare and*
6 *Institutions Code, any firearm-related offense pursuant to Sections*
7 *871.5 and 1001.5 of the Welfare and Institutions Code, or of the*
8 *conduct punished in paragraph (3) of subdivision (g) of Section*
9 *12072, or of any misdemeanor for which the defendant was*
10 *punished pursuant to subdivision (d) of Section 186.22, and who,*
11 *within 10 years of the conviction, owns, purchases, receives, or*
12 *has in his or her possession or under his or her custody or control,*
13 *any firearm is guilty of a public offense, which shall be punishable*
14 *by imprisonment in a county jail not exceeding one year or in the*
15 *state prison, by a fine not exceeding one thousand dollars (\$1,000),*
16 *or by both that imprisonment and fine. The court, on forms*
17 *prescribed by the Department of Justice, shall notify the department*
18 *of persons subject to this subdivision. However, the prohibition*
19 *in this paragraph may be reduced, eliminated, or conditioned as*
20 *provided in paragraph (2) or (3).*

21 (2) Any person employed as a peace officer described in Section
22 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment
23 or livelihood is dependent on the ability to legally possess a
24 firearm, who is subject to the prohibition imposed by this
25 subdivision because of a conviction under Section 273.5, 273.6,
26 or 646.9, may petition the court only once for relief from this
27 prohibition. The petition shall be filed with the court in which the
28 petitioner was sentenced. If possible, the matter shall be heard
29 before the same judge who sentenced the petitioner. Upon filing
30 the petition, the clerk of the court shall set the hearing date and
31 shall notify the petitioner and the prosecuting attorney of the date
32 of the hearing. Upon making each of the following findings, the
33 court may reduce or eliminate the prohibition, impose conditions
34 on reduction or elimination of the prohibition, or otherwise grant
35 relief from the prohibition as the court deems appropriate:

36 (A) Finds by a preponderance of the evidence that the petitioner
37 is likely to use a firearm in a safe and lawful manner.

38 (B) Finds that the petitioner is not within a prohibited class as
39 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
40 and the court is not presented with any credible evidence that the

1 petitioner is a person described in Section 8100 or 8103 of the
2 Welfare and Institutions Code.

3 (C) (i) Finds that the petitioner does not have a previous
4 conviction under this subdivision no matter when the prior
5 conviction occurred.

6 (ii) In making its decision, the court shall consider the
7 petitioner's continued employment, the interest of justice, any
8 relevant evidence, and the totality of the circumstances. The court
9 shall require, as a condition of granting relief from the prohibition
10 under this section, that the petitioner agree to participate in
11 counseling as deemed appropriate by the court. Relief from the
12 prohibition shall not relieve any other person or entity from any
13 liability that might otherwise be imposed. It is the intent of the
14 Legislature that courts exercise broad discretion in fashioning
15 appropriate relief under this paragraph in cases in which relief is
16 warranted. However, nothing in this paragraph shall be construed
17 to require courts to grant relief to any particular petitioner. It is
18 the intent of the Legislature to permit persons who were convicted
19 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
20 relief from the prohibition imposed by this subdivision.

21 (3) Any person who is subject to the prohibition imposed by
22 this subdivision because of a conviction of an offense prior to that
23 offense being added to paragraph (1) may petition the court only
24 once for relief from this prohibition. The petition shall be filed
25 with the court in which the petitioner was sentenced. If possible,
26 the matter shall be heard before the same judge that sentenced the
27 petitioner. Upon filing the petition, the clerk of the court shall set
28 the hearing date and notify the petitioner and the prosecuting
29 attorney of the date of the hearing. Upon making each of the
30 following findings, the court may reduce or eliminate the
31 prohibition, impose conditions on reduction or elimination of the
32 prohibition, or otherwise grant relief from the prohibition as the
33 court deems appropriate:

34 (A) Finds by a preponderance of the evidence that the petitioner
35 is likely to use a firearm in a safe and lawful manner.

36 (B) Finds that the petitioner is not within a prohibited class as
37 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
38 and the court is not presented with any credible evidence that the
39 petitioner is a person described in Section 8100 or 8103 of the
40 Welfare and Institutions Code.

1 (C) (i) Finds that the petitioner does not have a previous
2 conviction under this subdivision, no matter when the prior
3 conviction occurred.

4 (ii) In making its decision, the court may consider the interest
5 of justice, any relevant evidence, and the totality of the
6 circumstances. It is the intent of the Legislature that courts exercise
7 broad discretion in fashioning appropriate relief under this
8 paragraph in cases in which relief is warranted. However, nothing
9 in this paragraph shall be construed to require courts to grant relief
10 to any particular petitioner.

11 (4) Law enforcement officials who enforce the prohibition
12 specified in this subdivision against a person who has been granted
13 relief pursuant to paragraph (2) or (3) shall be immune from any
14 liability for false arrest arising from the enforcement of this
15 subdivision unless the person has in his or her possession a certified
16 copy of the court order that granted the person relief from the
17 prohibition. This immunity from liability shall not relieve any
18 person or entity from any other liability that might otherwise be
19 imposed.

20 (d) (1) Any person who, as an express condition of probation,
21 is prohibited or restricted from owning, possessing, controlling,
22 receiving, or purchasing a firearm and who owns, purchases,
23 receives, or has in his or her possession or under his or her custody
24 or control, any firearm but who is not subject to subdivision (a) or
25 (c) is guilty of a public offense, which shall be punishable by
26 imprisonment in a county jail not exceeding one year or in the
27 state prison, by a fine not exceeding one thousand dollars (\$1,000),
28 or by both that imprisonment and fine. The court, on forms
29 provided by the Department of Justice, shall notify the department
30 of persons subject to this subdivision. The notice shall include a
31 copy of the order of probation and a copy of any minute order or
32 abstract reflecting the order and conditions of probation.

33 (2) For any person who is subject to subdivision (a), (b), or (c),
34 the court shall, at the time judgment is imposed, provide on a form
35 supplied by the Department of Justice, a notice to the defendant
36 prohibited by this section from owning, purchasing, receiving,
37 possessing or having under his or her custody or control, any
38 firearm. The notice shall inform the defendant of the prohibition
39 regarding firearms and include a form to facilitate the transfer of

1 firearms. Failure to provide the notice shall not be a defense to a
2 violation of this section.

3 (e) Any person who (1) is alleged to have committed an offense
4 listed in subdivision (b) of Section 707 of the Welfare and
5 Institutions Code, an offense described in subdivision (b) of Section
6 1203.073, any offense enumerated in paragraph (1) of subdivision
7 (c), or any offense described in subdivision (a) of Section 12025,
8 subdivision (a) of Section 12031, or subdivision (a) of Section
9 12034, and (2) is subsequently adjudged a ward of the juvenile
10 court within the meaning of Section 602 of the Welfare and
11 Institutions Code because the person committed an offense listed
12 in subdivision (b) of Section 707 of the Welfare and Institutions
13 Code, an offense described in subdivision (b) of Section 1203.073,
14 any offense enumerated in paragraph (1) of subdivision (c), or any
15 offense described in subdivision (a) of Section 12025, subdivision
16 (a) of Section 12031, or subdivision (a) of Section 12034, shall
17 not own, or have in his or her possession or under his or her
18 custody or control, any firearm until the age of 30 years. A
19 violation of this subdivision shall be punishable by imprisonment
20 in a county jail not exceeding one year or in the state prison, by a
21 fine not exceeding one thousand dollars (\$1,000), or by both that
22 imprisonment and fine. The juvenile court, on forms prescribed
23 by the Department of Justice, shall notify the department of persons
24 subject to this subdivision. Notwithstanding any other law, the
25 forms required to be submitted to the department pursuant to this
26 subdivision may be used to determine eligibility to acquire a
27 firearm.

28 (f) Subdivision (a) shall not apply to a person who has been
29 convicted of a felony under the laws of the United States unless
30 either of the following criteria is satisfied:

31 (1) Conviction of a like offense under California law can only
32 result in imposition of felony punishment.

33 (2) The defendant was sentenced to a federal correctional facility
34 for more than 30 days, or received a fine of more than one thousand
35 dollars (\$1,000), or received both punishments.

36 (g) (1) Every person who purchases or receives, or attempts to
37 purchase or receive, a firearm knowing that he or she is prohibited
38 from doing so by a temporary restraining order or injunction issued
39 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure,
40 a protective order as defined in Section 6218 of the Family Code,

1 a protective order issued pursuant to Section 136.2 or 646.91 of
2 this code, or a protective order issued pursuant to Section 15657.03
3 of the Welfare and Institutions Code, is guilty of a public offense,
4 which shall be punishable by imprisonment in a county jail not
5 exceeding one year or in the state prison, by a fine not exceeding
6 one thousand dollars (\$1,000), or by both that imprisonment and
7 fine.

8 (2) Every person who owns or possesses a firearm knowing that
9 he or she is prohibited from doing so by a temporary restraining
10 order or injunction issued pursuant to Section 527.6 or 527.8 of
11 the Code of Civil Procedure, a protective order as defined in
12 Section 6218 of the Family Code, a protective order issued pursuant
13 to Section 136.2 or 646.91 of this code, or a protective order issued
14 pursuant to Section 15657.03 of the Welfare and Institutions Code,
15 is guilty of a public offense, which shall be punishable by
16 imprisonment in a county jail not exceeding one year, by a fine
17 not exceeding one thousand dollars (\$1,000), or by both that
18 imprisonment and fine.

19 (3) The Judicial Council shall provide notice on all protective
20 orders that the respondent is prohibited from owning, possessing,
21 purchasing, receiving, or attempting to purchase or receive a
22 firearm while the protective order is in effect. The order shall also
23 state that the firearm shall be relinquished to the local law
24 enforcement agency for that jurisdiction or sold to a licensed gun
25 dealer, and that proof of surrender or sale shall be filed within a
26 specified time of receipt of the order. The order shall state the
27 penalties for a violation of the prohibition. The order shall also
28 state on its face the expiration date for relinquishment.

29 (4) If probation is granted upon conviction of a violation of this
30 subdivision, the court shall impose probation consistent with
31 Section 1203.097.

32 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is
33 justifiable where all of the following conditions are met:

34 (A) The person found the firearm or took the firearm from a
35 person who was committing a crime against him or her.

36 (B) The person possessed the firearm no longer than was
37 necessary to deliver or transport the firearm to a law enforcement
38 agency for that agency's disposition according to law.

1 (C) If the firearm was transported to a law enforcement agency,
2 it was transported in accordance with paragraph (18) of subdivision
3 (a) of Section 12026.2.

4 (D) If the firearm is being transported to a law enforcement
5 agency, the person transporting the firearm has given prior notice
6 to the law enforcement agency that he or she is transporting the
7 firearm to the law enforcement agency for disposition according
8 to law.

9 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
10 (e), the trier of fact shall determine whether the defendant was
11 acting within the provisions of the exemption created by this
12 subdivision.

13 (3) The defendant has the burden of proving by a preponderance
14 of the evidence that he or she comes within the provisions of the
15 exemption created by this subdivision.

16 (i) Subject to available funding, the Attorney General, working
17 with the Judicial Council, the California Alliance Against Domestic
18 Violence, prosecutors, and law enforcement, probation, and parole
19 officers, shall develop a protocol for the implementation of the
20 provisions of this section. The protocol shall be designed to
21 facilitate the enforcement of restrictions on firearm ownership,
22 including provisions for giving notice to defendants who are
23 restricted, provisions for informing those defendants of the
24 procedures by which defendants shall dispose of firearms when
25 required to do so, provisions explaining how defendants shall
26 provide proof of the lawful disposition of firearms, and provisions
27 explaining how defendants may obtain possession of seized
28 firearms when legally permitted to do so pursuant to this section
29 or any other provision of law. The protocol shall be completed on
30 or before January 1, 2005.

31 *SEC. 2. No reimbursement is required by this act pursuant to*
32 *Section 6 of Article XIII B of the California Constitution because*
33 *the only costs that may be incurred by a local agency or school*
34 *district will be incurred because this act creates a new crime or*
35 *infraction, eliminates a crime or infraction, or changes the penalty*
36 *for a crime or infraction, within the meaning of Section 17556 of*
37 *the Government Code, or changes the definition of a crime within*
38 *the meaning of Section 6 of Article XIII B of the California*
39 *Constitution.*

1 SECTION 1. ~~Section 13826.1 of the Penal Code is amended~~
2 ~~to read:~~

3 ~~13826.1. (a) There is hereby established in the agency or~~
4 ~~agencies designated by the Director of Finance pursuant to Section~~
5 ~~13820, the Gang Violence Suppression Program, a program of~~
6 ~~financial and technical assistance for district attorneys' offices,~~
7 ~~local law enforcement agencies, county probation departments,~~
8 ~~school districts, county offices of education, or any consortium~~
9 ~~thereof, and community-based organizations which are primarily~~
10 ~~engaged in the suppression of gang violence. All funds appropriated~~
11 ~~to the agency or agencies designated by the Director of Finance~~
12 ~~pursuant to Section 13820 for the purposes of this chapter shall be~~
13 ~~administered and disbursed by the executive director of the agency~~
14 ~~or agencies designated by the Director of Finance pursuant to~~
15 ~~Section 13820 in consultation with the California Council on~~
16 ~~Criminal Justice, and shall to the greatest extent feasible be~~
17 ~~coordinated or consolidated with federal funds that may be made~~
18 ~~available for these purposes.~~

19 ~~(b) The executive director is authorized to allocate and award~~
20 ~~funds to cities, counties, school districts, county offices of~~
21 ~~education, or any consortium thereof, and community-based~~
22 ~~organizations in which gang violence suppression programs are~~
23 ~~established in substantial compliance with the policies and criteria~~
24 ~~set forth in this chapter.~~

25 ~~(c) The allocation and award of funds shall be made on the~~
26 ~~application of the district attorney, chief law enforcement officer,~~
27 ~~or chief probation officer of the applicant unit of government and~~
28 ~~approved by the legislative body, on the application of school~~
29 ~~districts, county offices of education, or any consortium thereof,~~
30 ~~or on the application of the chief executive of a community-based~~
31 ~~organization. All programs funded pursuant to this chapter shall~~
32 ~~work cooperatively to ensure the highest quality provision of~~
33 ~~services and to reduce unnecessary duplication. Funds disbursed~~
34 ~~under this chapter shall not supplant local funds that would, in the~~
35 ~~absence of the Gang Violence Suppression Program, be made~~
36 ~~available to support the activities set forth in this chapter. Funds~~
37 ~~awarded under this program as local assistance grants shall not be~~
38 ~~subject to review as specified in Section 10295 of the Public~~
39 ~~Contract Code.~~

1 ~~(d) The executive director shall prepare and issue written~~
2 ~~program and administrative guidelines and procedures for the Gang~~
3 ~~Violence Suppression Program, consistent with this chapter. These~~
4 ~~guidelines shall set forth the terms and conditions upon which the~~
5 ~~agency or agencies designated by the Director of Finance pursuant~~
6 ~~to Section 13820 is prepared to offer grants of funds pursuant to~~
7 ~~statutory authority. The guidelines do not constitute rules,~~
8 ~~regulations, orders, or standards of general application.~~

9 ~~(e) Annually, commencing November 1, 1984, the executive~~
10 ~~director shall prepare a report to the Legislature describing in detail~~
11 ~~the operation of the statewide program and the results obtained by~~
12 ~~district attorneys' offices, local law enforcement agencies, county~~
13 ~~probation departments, school districts, county offices of education,~~
14 ~~or any consortium thereof, and community-based organizations~~
15 ~~receiving funds under this chapter and under comparable federally~~
16 ~~financed awards.~~

17 ~~(f) Criteria for selection of district attorneys' offices, local law~~
18 ~~enforcement agencies, county probation departments, school~~
19 ~~districts, county offices of education, or any consortium thereof,~~
20 ~~and community-based organizations to receive gang violence~~
21 ~~suppression funding shall be developed in consultation with the~~
22 ~~Gang Violence Suppression Advisory Committee whose members~~
23 ~~shall be appointed by the Executive Director of the agency or~~
24 ~~agencies designated by the Director of Finance pursuant to Section~~
25 ~~13820, unless otherwise designated.~~

26 ~~(g) The Gang Violence Suppression Advisory Committee shall~~
27 ~~be composed of five district attorneys; two chief probation officers;~~
28 ~~two representatives of community-based organizations; three~~
29 ~~attorneys primarily engaged in the practice of juvenile criminal~~
30 ~~defense; three law enforcement officials with expertise in~~
31 ~~gang-related investigations; one member from the California Youth~~
32 ~~Authority Gang Task Force nominated by the Director of the~~
33 ~~California Youth Authority; one member of the Department of~~
34 ~~Corrections Law Enforcement Liaison Unit nominated by the~~
35 ~~Director of the Department of Corrections; one member from the~~
36 ~~Department of Justice nominated by the Attorney General; the~~
37 ~~Superintendent of Public Instruction, or his or her designee; one~~
38 ~~member of the California School Boards Association; and one~~
39 ~~representative of a school program specializing in the education~~
40 ~~of the target population identified in this chapter.~~

1 ~~Five members of the Gang Violence Suppression Advisory~~
2 ~~Committee appointed by the Executive Director of the agency or~~
3 ~~agencies designated by the Director of Finance pursuant to Section~~
4 ~~13820 shall be from rural or predominately suburban counties and~~
5 ~~shall be designated by the Executive Director as comprising the~~
6 ~~Rural Gang Task Force Subcommittee.~~

7 ~~The Rural Gang Task Force Subcommittee, in coordination with~~
8 ~~the Gang Violence Suppression Advisory Committee and the~~
9 ~~agency or agencies designated by the Director of Finance pursuant~~
10 ~~to Section 13820, shall review the Gang Violence Suppression~~
11 ~~Program participation requirements and recommend changes in~~
12 ~~the requirements which recognize the unique conditions and~~
13 ~~constraints that exist in small rural jurisdictions and enhance the~~
14 ~~ability of small rural jurisdictions to participate in the Gang~~
15 ~~Violence Suppression Program.~~

16 ~~(h) The Director of the agency or agencies designated by the~~
17 ~~Director of Finance pursuant to Section 13820 shall designate a~~
18 ~~staff member in the Gang Violence Suppression Program to act~~
19 ~~as the Rural Gang Prevention Coordinator and to provide technical~~
20 ~~assistance and outreach to rural jurisdictions with emerging gang~~
21 ~~activities. It is the intent of the Legislature that compliance with~~
22 ~~this subdivision not necessitate an additional staff person.~~

23 ~~(i) This section shall be operative January 1, 1994.~~

24 ~~(j) Local school districts may enter into memoranda of~~
25 ~~understanding with local city attorney and district attorney offices~~
26 ~~to ensure the safety of their students pursuant to this chapter.~~